

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the
Accusation Against:

Byron B. Timberlake, M.D.
Certificate #C028613

Respondent.

No. D-3525

DECISION

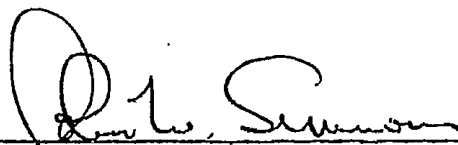
The attached Stipulation is hereby adopted by the
Division of Medical Quality of the Board of Medical Quality
Assurance as its Decision in the above-entitled matter.

This Decision shall become effective on _____

June 13, 1987

IT IS SO ORDERED _____ May 13, 1987

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE



John W. Simmons.
Secretary-Treasurer

1 JOHN K. VAN DE KAMP, Attorney General
of the State of California
2 THOMAS S. LAZAR,
Deputy Attorney General
3 110 West A Street, Suite 700
San Diego, California 92101
4 Telephone: (619) 238-3327

5 Attorneys for Complainant

6
7 BEFORE THE
8 BOARD OF MEDICAL QUALITY ASSURANCE
9 DIVISION OF MEDICAL QUALITY
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation) No. D-3525
12 Against:)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
BYRON B. TIMBERLAKE, M.D.)
125 Medical Circle)
Winchester, V.A. 22601)

California Physician's and)
Surgeon's Certificate)
No. C 028613,)

Respondent.)

19 IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE
20 PARTIES TO THE ABOVE-ENTITLED MATTER THAT:

21 1. Kenneth J. Wagstaff, complainant, is the Executive
22 Director of the Board of Medical Quality Assurance (hereinafter
23 the "Board") and is represented by John K. Van De Kamp, Attorney
24 General of the State of California by Thomas S. Lazar, Deputy
25 Attorney General.

26 2. Bryon B. Timberlake, M.D. (hereinafter "respondent") is
27 represented in this administrative disciplinary proceeding before

1 the Board by Thomas A. Schultz, Esq. The respondent has
2 counseled with Mr. Schultz concerning the effect of this
3 stipulation which respondent has carefully read and fully
4 understands.

5 3. At all times mentioned herein, respondent has been
6 licensed by the Board under Physician's and Surgeon's Certificate
7 No. C 028613. Said certificate was issued by the Board on
8 November 14, 1966, and is in CURRENT STATUS at the present time.

9 4. On or about July 31, 1986, complainant, in his official
10 capacity as Executive Officer of the Board, filed Accusation No.
11 D-3525 against respondent. On or about August 12, 1986,
12 respondent was served with Accusation No. D-3525, together with
13 all other statutorily required documents, at his address of
14 record on file with the Board, 125 Medical Circle, Winchester,
15 Virginia, 22601. On or about August 29, 1986, a Notice of
16 Defense was filed on respondent's behalf by his attorney of
17 record, Thomas A. Schultz, Esq.

18 5. Respondent is fully aware of the charges and allegations
19 contained in Accusation No. D-3525, having been fully advised of
20 same by his attorney of record, Thomas A. Schultz, Esq.
21 Respondent understands that the charges and allegations contained
22 in Accusation No. D-3525 would constitute cause for imposing
23 discipline upon his California medical license heretofore issued
24 by the Board.

25 6. Respondent is fully aware of his right to a hearing on
26 the charges and allegations contained in Accusation No. D-3525,
27 his right to reconsideration, appeal, and any and all other

1 rights which may be accorded him pursuant to the California
2 Administrative Procedure Act, having been fully advised of same
3 by his attorney of record, Thomas A. Schultz, Esq.

4 7. Respondent, having the benefit of counsel, hereby
5 freely, voluntarily and intelligently waives his rights to a
6 hearing, reconsideration, appeal, and any and all other rights
7 which may be accorded him pursuant to the California
8 Administrative Procedure Act with regard to Accusation No. D-
9 3525.

10 8. Respondent understands that by signing this stipulation,
11 rather than contesting the charges and allegations contained in
12 Accusation No. D-3525, he is enabling the Division of Medical
13 Quality, Board of Medical Quality Assurance, to issue its order
14 accepting the voluntary surrender of his California medical
15 license without any further notice, opportunity to be heard or
16 formal proceeding.

17 9. California Business and Professions Code section 2305
18 provides, in pertinent part, that the revocation, suspension, or
19 other discipline by another state of a license or certificate to
20 practice medicine issued by the state to a licensee under Chapter
21 5 of Division 1 of that Code shall constitute grounds for
22 disciplinary action for unprofessional conduct against such
23 licensee in this state.

24 10. For purposes of this stipulation and voluntary
25 surrender only, respondent hereby admits that he has subjected
26 his California medical license to disciplinary action under
27 Business and Professions Code section 2234 on the grounds of

unprofessional conduct as defined in section 2305 of that Code as more particularly described hereinafter:

(a) On August 7, 1985, the Virginia State Board of Medicine, after an administrative hearing on a Statement of Particulars filed against respondent on or about November 14, 1984, ordered that respondent's license to practice medicine in the State of Virginia be revoked, stayed said revocation, and placed respondent's medical license on probation for an indefinite period of time upon certain terms and conditions.

(b) Attached hereto as Attachment "A" is a copy of the Findings of Fact, Conclusions of Law and Order of the Virginia State Board of Medicine. Said documents are incorporated by reference herein as if fully set forth for the sole purpose of establishing the fact that respondent's Virginia medical license has been disciplined by the Virginia Board of Medical Examiners in violation of sections 2234 and 2305 of the California Business and Professions Code and for no other purpose. Respondent makes no other admissions other than the above.

11. Respondent hereby voluntarily surrenders his California Physician's and Surgeon's Certificate No. C 028613 to the Division of Medical Quality, Board of Medical Quality Assurance, for its formal acceptance.

12. Upon acceptance of the within stipulation by the Division of Medical Quality, respondent agrees to surrender and cause to be delivered to the Division both his California medical

1 license and wallet certification.

2 13. Respondent fully understands that when the Division of
3 Medical Quality accepts the voluntary surrender of respondent's
4 medical license, he will no longer be permitted to practice
5 medicine within the State of California.

6 14. In consideration for the foregoing stipulations,
7 admissions and recitals, the Division of Medical Quality, upon
8 formal acceptance of this stipulation, agrees to dismiss
9 Accusation No. D-3525 currently pending against respondent.

10 15. Respondent fully understands that should he ever
11 reapply for a license to practice medicine in the State of
12 California, the Division of Medical Quality can allege, as a
13 basis for the denial of any reapplication, respondent's violation
14 of California Business and Professions Code sections 2234 and
15 2305, as admitted to and described in paragraph 10, above.

16 16. This stipulation for voluntary surrender of
17 respondent's medical license, together with Attachment "A"
18 hereto, is intended by the parties herein to be an integrated
19 writing, memorializing the complete agreements of the parties.

20 17. All stipulations, admissions and recitals contained in
21 this stipulation are made solely and exclusively for the purpose
22 of settlement of Accusation No. D-3525 currently pending against
23 respondent and for the use of the Division of Medical Quality and
24 the Board of Medical Quality Assurance in any future
25 administrative proceeding involving respondent.

26 18. In the event that this stipulation is rejected, for any
27 reason, by the Division of Medical Quality, it will be of no

1 force and effect for either party.

2 I concur in this stipulation.

3 Dated: March 9, 1987.

4 JOHN K. VAN DE KAMP, Attorney General
5 of the State of California
6 THOMAS S. LAZAR,
7 Deputy Attorney General

8 BY Thomas S. Lazar
9 THOMAS S. LAZAR
10 Deputy Attorney General

11 Attorneys for Complainant

12 I concur in this stipulation.

13 Dated: March 13, 1987.

14 Thomas A. Schultz, Esq.
15 THOMAS A. SCHULTZ, ESQ.

16 Attorney for Respondent

17 ACKNOWLEDGMENT

18 I, Bryon B. Timberlake, M.D., have read the above
19 stipulation and enter into it freely, voluntarily, with full
20 knowledge of its effect, and on advise of counsel, and do hereby
21 surrender my Certificate of Licensure No. C 028613 to the
22 Division of Medical Quality, Board of Medical Quality Assurance,
23 for their formal acceptance of its surrender. By so surrendering
24 my license, I recognize that upon formal acceptance of same by
25 the Division, I will lose all rights and privileges to practice
26 medicine in the State of California.

27 Dated: March 13, 1987.

Bryon B. Timberlake
BRYON B. TIMBERLAKE, M.D.

Respondent

EXHIBIT A

VIRGINIA:

BEFORE THE STATE BOARD OF MEDICINE

IN RE:

BYRON B. TIMBERLAKE, M.D.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

This case was heard by the Hearing Officer on March 4 and 5, 1985 in Winchester, Virginia, pursuant to Notice Of Hearing/ Statement Of Particulars dated November 14, 1984 and by agreement of counsel, the State Board of Medicine and Byron B. Timberlake, M.D. each being represented by counsel at hearing and Byron B. Timberlake, M.D. being present in person. In addition, the Hearing Officer received, considered and ruled on certain motions as set out in the Hearing Officer's letter dated February 13, 1985, a copy of which is made part of this record, and has received and considered the written memoranda of counsel submitted after the hearing. Finally, the Hearing Officer hereby reaffirms all rulings previously made as to any motions made or objections raised by counsel. All sections and titles cited herein refer to the Code of Virginia of 1950, as amended.

FINDINGS OF FACT

1. Dr. Timberlake has limited his practice of medicine to the speciality of otolaryngology.
2. Dr. Timberlake sees approximately 100 patients a week.
3. The complaints against Dr. Timberlake are with respect to six unrelated patients.
4. The six unrelated patients were all adolescent boys at the time of the alleged behavior of Dr. Timberlake about which they complained.

5. All alleged actions by Dr. Timberlake in relation to the six adolescent boys occurred between the years 1977 and 1984.

6. Patient A, presenting a history of chronic sinus infections and an abscessed ear, was seen by Dr. Timberlake on October 12, 17 and 20, 1983.

On October 12, 1983 in the presence of patient's mother, Dr. Timberlake examined the patient's ear, nose and throat. On the same date Dr. Timberlake examined Patient A in the operating room with no person present other than Dr. Timberlake and the patient.

7. During the October 12, 1983 examination in the operating room, Dr. Timberlake used the palm of his hand to rub or brush over the testicles and penis of Patient A.

8. On October 20, 1983 Dr. Timberlake examined Patient A in the operating room with no person present other than Dr. Timberlake and the patient.

9. During the October 20, 1983 examination in the operating room, Dr. Timberlake used the palm of his hand to rub or brush over the testicles and penis of Patient A several times.

10. Dr. Timberlake stated that his reason for examining an adolescent male's chest or genital area in a room separate from the patient's mother and the doctor's office staff was that he felt that the male adolescent patient would feel awkward and embarrassed.

11. Although Dr. Timberlake testified that when he rechecked Patient A's groin area on the third visit he was "checking for mono mainly", Dr. Timberlake never advised the patient or the patient's mother that he suspected the patient might have mononucleosis.

12. Dr. Timberlake's examination of Patient A's genitals were not customary nor reasonable for an otolaryngologist.

13. There is no medical reason to examine the chest of an adolescent male patient outside the presence of the patient's mother.

14. On July 14, 1983, Dr. Timberlake examined Patient B in an examining room in the presence of patient's mother. Dr. Timberlake then stated that he wanted to examine the patient's heart and lungs, took the patient to the operating room where only Dr. Timberlake and the patient were present. During the examination in the operating room, Dr. Timberlake touched the patient's penis with the heel of his hand.

15. On August 8, 1983, patient B returned to Dr. Timberlake's office for a scheduled pre-operative examination. Dr. Timberlake examined the patient's ears, nose and throat in the presence of the patient's mother and then took the patient to the operating room for the expressed purpose of examining the patient's heart and lungs. During the examination in the operating room, with only Dr. Timberlake and the patient present, Dr. Timberlake placed his hand on the patient's lower abdomen, touching the top of the patient's penis with the heel of his hand.

16. On September 20, 1983, Dr. Timberlake operated on Patient B. Postoperatively, Dr. Timberlake came to Patient B's hospital room and checked the packs in the patient's nose. Dr. Timberlake also pulled the curtains around the patient's bed, told the patient to lower his pajama bottom and then placed his hand on the patient's lower abdomen, touching the top of the patient's penis with the heel of his hand.

17. It was not within the scope of an appropriate otolaryngology examination to palpate the abdomen of Patient B following a septoplasty since there were no complaints by Patient B of abdominal pain. The postoperative examination conducted by Dr. Timberlake in the hospital room was not within the scope of an appropriate otolaryngology examination.

18. On October 27, 1982, Patient C was examined by Dr. Timberlake in an examining room in the presence of the patient's mother. Dr. Timberlake then stated that he was going to take Patient C to another room to check his lungs. Dr. Timberlake then took Patient C to the operating room and in the presence of only the patient placed his hand on the patient's penis and then his ear on the patient's lower abdomen.

19. Dr. Timberlake examined Patient C seven other times and each occasion took the patient to the operating room, where only the doctor and the patient were present, and placed his hand upon the patient's penis and then placed his ear upon the patient's lower abdomen.

20. It is not within the scope of an appropriate otolaryngology examination for a doctor to place his ear on the

patient's lower abdomen. It was not within the scope of an appropriate otolaryngology examination for Dr. Timberlake to examine Patient C's genitalia.

21. On April 21, 1977, Dr. Timberlake performed a pre-operative physical examination on Patient D, including a hernia check, for surgery scheduled for April 28, 1977. Dr. Timberlake testified that he generally performs pre-operative physical examinations two days prior to scheduled surgery.

22. Dr. Timberlake on five occasions squeezed the penis of Patient D during pre-operative examinations. Dr. Timberlake's squeezing of Patient D's penis was not within the scope of an appropriate otolaryngology examination.

23. Postoperatively, Dr. Timberlake squeezed Patient D's penis during examinations. There was no medical reason to perform a postoperative examination of Patient D's genital area or to squeeze his penis.

24. On October 17, 1983, Dr. Timberlake examined the ears, nose, throat and chest of Patient E in the presence of the patient's mother. Dr. Timberlake and a nurse took the patient to the operating room for the purpose of removing wax from the patient's ears. In the presence of only the patient, Dr. Timberlake touched the patient's testicles and penis while conducting what Dr. Timberlake described as a check for a hernia.

25. Patient E was examined on two other occasions in the operating room when Dr. Timberlake, only in the presence of the

patient, touched with his hand the testicles and penis of the patient.

26. The examination of Patient E's genital area was not with the scope of an appropriate otolaryngology examination.

27. Dr. Timberlake treated Patient F during the period of February 25, 1975 through October 26, 1977, including twenty-two office visits.

28. During most of the office visits, Dr. Timberlake took the patient to the operating room and, in the presence of only the patient, on repeated occasions held or cupped the patient's testicles, on some occasions squeezed the patient's penis with his fingers and on one occasion placed his ear on the patient's abdomen below his navel.

29. Dr. Timberlake's repeated examinations of F's genital area were medically unnecessary and not within the scope of an appropriate otolaryngology examination.

30. Dr. Timberlake performs all aspects of his physical examinations in the examining room for all patients other than male adolescent boys.

31. Dr. Timberlake's practice routinely included the examination of the chest or groin of an adolescent boy in private while Dr. Timberlake's nurse or staff member waited in the hallway while Dr. Timberlake performed the examination behind a closed door.

CONCLUSIONS OF LAW

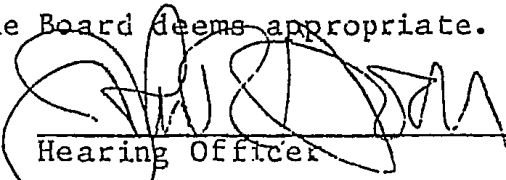
1. Dr. Timberlake is guilty of fraud or deceit in the practice of otolaryngology based on the above stated findings of fact.

2. Dr. Timberlake is guilty of unprofessional conduct as defined in §54-317 of the Code of Virginia. Particularly, Dr. Timberlake's inappropriate examinations as described in the findings of fact are contrary to the standards of ethics of his branch of the healing arts and were conducted to such a manner as to make his practice a danger to the health and welfare of his patients. § 54-317(11)

RECOMMENDATIONS

The Hearing Officer recommends that the Board of Medicine, based on the findings of fact and conclusions of law set out above, place Dr. Timberlake on probation for such time as it may designate and direct that during such period Dr. Timberlake not provide any professional services as a medical doctor to any person under the age of 18 years and that he receive such psychiatric counseling as the Board deems appropriate.

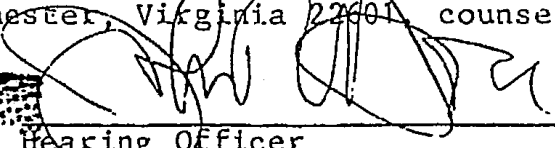
Date: 06-03-85

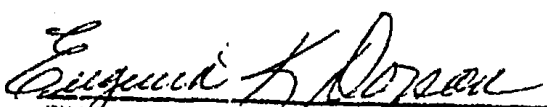

Hearing Officer

CERTIFICATE

I hereby certify that a true copy of the foregoing pleading was mailed to Howard M. Casway, Esquire, Assistant Attorney General, 101 N. Eighth Street, Richmond, Virginia 23219 and to Thomas A. Schultz, Jr., Esquire, Harrison & Johnson, P. O. Box 809, Winchester, Virginia 22601, counsel for the respondent.

TRUE COPY TESTED


Hearing Officer


EUGENIA K. DORSON, EXECUTIVE SECRETARY
VIRGINIA STATE BOARD OF MEDICINE

VIRGINIA;

BEFORE THE STATE BOARD OF MEDICINE

IN RE: BYRON B. TIMBERLAKE, M.D.

ORDER

In accordance with the terms and conditions placed on Dr. Timberlake's license by an Order of the Virginia State Board of Medicine (hereinafter the "Board") entered August 7, 1985, Byron B. Timberlake, M.D., appeared before the Psychiatric Advisory Board on November 21, 1985. The Board met in Williamsburg, Virginia, on November 21, 1985, and heard the oral report by the Psychiatric Advisory Board pertaining to Dr. Timberlake. Charles E. Poston, Hearing Officer, was present to conduct the hearing in an orderly fashion; to make rulings of law pertaining to the admissibility of evidence; and to give the Board any required instructions which would enable it to make an appropriate determination. The proceedings were recorded by a certified court reporter.

The Board was represented by Howard M. Casway, Assistant Attorney General, who made an opening statement to the Board in Dr. Timberlake's presence reviewing his past history. Dr. Timberlake was present and was represented by Thomas A. Schultz, Jr., Esquire. Dr. Timberlake made statements to and answered questions posed by members of the Board subsequent to an opening statement by Mr. Schultz.

Dr. Timberlake, by counsel moved the admission of two exhibits into evidence: 1) a seven-page document purporting to

be a Motion for Judgment in the Circuit Court for the City of Winchester, Docket No. 85-L-111 and 2) a six-page document purporting to be a Motion for Judgment in the Circuit Court for the City of Winchester, Docket No. 85-L-110. The Hearing Officer, finding both exhibits to be immaterial to this case, refused to admit the exhibits into evidence and numbered the exhibits as Respondent's Exhibits #1 and #2, respectively, for identification purposes.

Prior to the Board going into Executive Session, the Hearing Officer ruled as Conclusions of Law that the Order of the Board entered August 7, 1985 was final and that Respondent's Exhibits #1 and #2 not be admitted into evidence. Mr. Schultz's exceptions to the Hearing Officer's Conclusions of Law were noted.

After due consideration of the evidence tendered by Dr. Timberlake, the psychiatric and psychological evaluation conducted by Drs. Mooney and Grayson, the oral report of the Psychiatric Advisory Board, the record in the case and the conclusions of law of the Hearing Officer, the Board voted to accept the Conclusions of Law of the Hearing Officer and to revoke the license of Byron B. Timberlake, M.D., staying said revocation and placing his license on indefinite probation with certain terms and conditions.

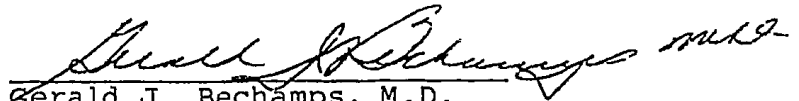
WHEREFORE, the Board accepts the Hearing Officer's Conclusions of Law in this matter.

WHEREFORE, it is hereby ORDERED that the license of Byron B. Timberlake, M.D., be and is hereby REVOKED. Said REVOCATION is

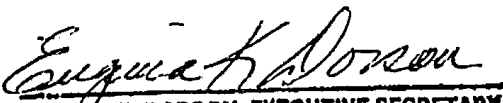
STAYED and the license of Byron B. Timberlake, M.D., to practice medicine in the Commonwealth of Virginia is placed on PROBATION for an INDEFINITE PERIOD of time with the following terms and conditions:

- 1) That all examinations of patients under the age of eighteen by Dr. Timberlake shall be in the presence of an appropriate chaperone, preferably a parent;
- 2) That Dr. Timberlake enter into treatment by a psychiatrist or clinical psychologist selected from a list of three names provided by the Psychiatric Advisory Board;
- 3) That Dr. Timberlake authorize any treating psychiatrist or clinical psychologist to freely communicate with the Psychiatric Advisory Board and the Board of Medicine;
- 4) That Dr. Timberlake be seen by the Psychiatric Advisory Board prior to the November 1986 Board meeting;
- 5) That Dr. Timberlake be seen by the Board of Medicine at its November 1986 meeting;
- 6) Violation of any of the above terms and conditions shall result in the immediate rescission of the stay of revocation.

FOR THE BOARD


Gerald J. Bechamps, M.D.
President
State Board of Medicine

TRUE COPY TESTED


EUGENIA K. DORSON, EXECUTIVE SECRETARY
VIRGINIA STATE BOARD OF MEDICINE

ENTERED: 1-7-86

VIRGINIA:

BEFORE THE VIRGINIA STATE BOARD OF MEDICINE

IN RE: Brian B. Timberlake, M.D.

ORDER

Pursuant to §§ 54-318.1, 54-318.3, 54-958, 54-959, and 9-6.14:12 of the Code of Virginia (1950), as amended, a formal administrative hearing was held before John R. Hooe, III, Esquire, in the absence of the Virginia State Board of Medicine (hereinafter the "Board") on March 4, 1985 and March 5, 1985 in Winchester, Virginia. The purpose of the hearing was to inquire into allegations of violation of § 54-316 as more fully described in a Notice of Hearing and Statement of Particulars dated November 14, 1984 and incorporated by reference herein. Dr. Timberlake appeared in person and by counsel, Thomas A. Schultz, Jr., Esquire, and the Board was represented by Howard M. Casway, Assistant Attorney General. The proceedings were recorded by a certified court reporter.

Following the hearing, the hearing officer made Proposed Findings of Fact and Conclusions of Law, to which both parties excepted.

On July 21, 1985, the Board met in Virginia Beach to hear closing arguments by both counsel and to review the record in the case. The proceedings were presided over by Charles Poston, Esquire a duly appointed hearing officer, and were recorded by a certified court reporter. Following its review of all documents filed by counsel, all rulings by Mr. Hooe, the exceptions filed

thereto, the transcript of the proceedings, the exhibits filed, the proposed findings of fact and conclusions of law of Mr. Hooe, and oral argument of counsel, the Board makes the following Findings of Fact, Conclusions of Law, Rulings on evidence, motions and exceptions, and Order:

With respect to Dr. Timberlake's Exceptions to Rulings and Report of the Hearing Officer dated July 8, 1985, the Board rules as follows:

1. The Board sustains Dr. Timberlake's objection and specifically considered the testimony of Dr. George Lehne in reaching its determination;

2. The Board overrules Dr. Timberlake's second exception and sustains the hearing officer, Mr. Hooe, thereby excluding the testimony of Dr. Green;

3. The Board overrules Dr. Timberlake's third exception and sustains the hearing officer, Mr. Hooe, in not requiring the Board to more particularly specify its allegations against Dr. Timberlake;

4. The Board overrules Dr. Timberlake's fourth exception and holds that there is substantial evidence in the record from which Mr. Hooe could have reached his conclusions;

5. The Board overrules Dr. Timberlake's fifth exception, incorporating all previous objections and/or exceptions previously made which are contained in the transcript of the hearing of March 4 and 5, 1985 and in all other documents which are part of the record of this case. Specifically, the Board overrules Dr. Timberlake's objections contained in a document styled Objections

to Proceedings dated February 7, 1985, items 1, 2, 3, and 4, and specifically finds with respect to item 4 that no evidence to substantiate said objection was presented nor was there any evidence of prejudice by virtue of the conduct alleged therein. The Board specifically upholds all other rulings of Mr. Hooe other than with respect to the testimony of Dr. Lehne during the hearing.

With respect to Dr. Timberlake's objection to the use of a second hearing officer dated February 11, 1985, the Board specifically overrules said objection.

With respect to the Proposed Findings of Fact and Conclusions of Law of Mr. Hooe, the Board accepts all Findings of Fact with the following amendments: Finding of Fact #4 is amended to read, "The six unrelated patients were all pre-adolescent boys at the time of the alleged behavior of Dr. Timberlake about which they complained, ages six through thirteen." Finding of Fact #5 is amended to read, "All alleged actions by Dr. Timberlake in relation to the six boys occurred between the years 1977 and 1984." Finding of Fact #11 is amended to read, "Although Dr. Timberlake testified that when he re-checked patient A's groin area on the third visit, he was 'checking for adnopathy', Dr. Timberlake never advised the patient or the patient's mother that he suspected the patient might have mononucleosis, nor did he obtain any laboratory tests to verify his suspicion." Finding of Fact #13 is amended to read, "There is no medical reason to examine the chest of an adolescent or pre-adolescent male patient outside the presence of the patient's

mother." Finding of Fact #14 is corrected typographically in its last line to read, "heel" rather than "heal" of his hand. Finding of Fact #30 is amended to read, "Dr. Timberlake performs all aspects of his physical examinations in the examining room for all patients other than pre-adolescent or adolescent males." Finding of Fact #31 is amended to read, "Dr. Timberlake's practice routinely included the examination of the chest or groin of an adolescent or pre-adolescent male in private while Dr. Timberlake's nurse or staff member waited in the hallway while Dr. Timberlake performed the examination behind a closed door."

CONCLUSIONS OF LAW

The Board accepts Mr. Hooe's Proposed Conclusions of Law with the following amendments:

1. Conclusion of Law #1 is amended to read, "Dr. Timberlake is guilty of fraud or deceit in the practice of otolaryngology in violation of § 54-316(3) as more fully defined in § 54-317(14) based on the above-stated Findings of Fact.

2. Conclusion of Law #2 is amended to read, "Dr. Timberlake is guilty of unprofessional conduct in violation of § 54-316(3) as more fully defined in § 54-317 of the Code of Virginia. Particularly, Dr. Timberlake's inappropriate examinations as described in the Findings of Fact are contrary to the standards of ethics of his branch of the healing arts and were conducted in such a manner as to make his practice a danger to the health and welfare of his patients. § 54-317(11).

3. The Board makes the following additional Conclusion of Law: The above stated Findings of Fact and Conclusions of Law

constitute violations of § 54-316(3) as more fully defined in § 54-317(16).

The Board specifically overrules the proposed sanction of the hearing officer and did not consider it in determining its sanction; therefore the Attorney General's exception to Mr. Hooe's authority to recommend sanctions is moot.

Wherefore, it is hereby ORDERED that the license of Brian B. Timberlake, M.D., be and it hereby is REVOKED. Said revocation is STAYED and the license of Brian B. Timberlake, M.D. is placed on PROBATION for an INDEFINITE PERIOD OF TIME upon the following terms and conditions:

1. That he not provide any medical services as a medical doctor to any male under 18 years of age;

2. That he undergo psychological testing by a clinical psychologist approved by the Board, with a full report submitted to the Psychiatric Advisory Board;

3. That he be seen by a psychiatrist selected from a list of three approved by the Psychiatric Advisory Board;

4. That he authorize any treating psychiatrist or psychologist to freely communicate with the Psychiatric Advisory Board and the Board of Medicine;

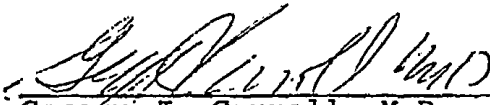
5. That he be seen by the Psychiatric Advisory Board at its next regularly scheduled meeting and at such additional times as the Psychiatric Advisory Board may direct, with full reports to the Board of Medicine;

6. That at the conclusion of the above directed psychological and psychiatric testing and evaluation, Dr. Timberlake

shall be seen by the full Board of Medicine at its next regularly scheduled meeting, at which time the Board reserves unto itself the right to impose such additional terms and conditions of probation as it deems appropriate;

7. Violation of any of the above terms and conditions shall result in the immediate rescission of the stay of revocation.

FOR THE BOARD


George J. Carroll, M.D.
Secretary-Treasurer
State Board of Medicine

ENTER: 8-7-85

TRUE COPY TESTED


EUGENIA K. DORSON, EXECUTIVE SECRETARY
VIRGINIA STATE BOARD OF MEDICINE

1 JOHN K. VAN DE KAMP, Attorney General
2 of the State of California
3 THOMAS S. LAZAR,
4 Deputy Attorney General
5 110 West A Street, Suite 700
6 San Diego, California 92101
7 Telephone: (619) 238-3327

8 Attorneys for Complainant

9
10 BEFORE THE DIVISION OF MEDICAL QUALITY
11 BOARD OF MEDICAL QUALITY ASSURANCE
12 DEPARTMENT OF CONSUMER AFFAIRS

13 STATE OF CALIFORNIA

14 In the Matter of the Accusation)
15 Against:)

NO. D-3525

16 BYRON B. TIMBERLAKE, M.D.)
17 125 Medical Circle)
18 Winchester, Virginia 22601)

ACCUSATION

19 California Physician's and)
20 Surgeon's Certificate #C 028613)

21 Respondent.)
22)
23)
24)
25)
26)
27)

Complainant Kenneth J. Wagstaff alleges as follows:

1. Complainant is the Executive Director of the Board of Medical Quality Assurance (hereinafter the "Board") and makes this accusation solely in his official capacity as such.

2. At all times mentioned herein, respondent Byron B. Timberlake, M.D. (hereinafter "respondent"), was licensed by the Board under Physician's and Surgeon's Certificate No. C-028613. Said certificate was issued by the Board on November 14, 1966, and is in CURRENT STATUS at the present time.

1 3. California Business and Professions Code section
2 2220 provides, in pertinent part, that the Division of Medical
3 Quality may take action against all persons guilty of violating
4 the provisions of Chapter 5 of Division 1 of that Code.

5 4. California Business and Professions Code section
6 2227 provides that a licensee whose matter has been heard by the
7 Division of Medical Quality, by a medical quality review
8 committee or a panel of such committee, or by an administrative
9 law judge, or whose default has been entered, and who is found
10 guilty may, in accordance with the provisions of this chapter:

11 (a) have his or her certificate revoked upon order of the
12 division; (b) have his or her right to practice suspended for a
13 period not to exceed one year upon order of the division or a
14 committee or panel thereof; (c) be placed on probation upon
15 order of the division or a committee or panel thereof; (d) be
16 publicly reprimanded by the division or a committee or panel
17 thereof; (e) have such other action taken in relation to
18 discipline as the division, a committee or panel thereof, or an
19 administrative law judge may deem proper.

20 5. California Business and Professions Code section
21 2234 provides, in pertinent part, that the Division of Medical
22 Quality shall take action against any licensee who is charged
23 with unprofessional conduct which includes, but is not limited
24 to, the commission of any act involving dishonesty or corruption
25 which is substantially related to the qualifications, functions,
26 or duties of a physician and surgeon.

27 /

1 6. California Business and Professions Code section
2 2305 provides, in pertinent part, that the revocation,
3 suspension, or other discipline by another state of a license or
4 certificate to practice medicine issued by the state to a
5 licensee under Chapter 5 of Division 1 of that Code shall
6 constitute grounds for disciplinary action for unprofessional
7 conduct against such licensee in this state.

8 7. Respondent has subjected his license to
9 disciplinary action under California Business and Professions
10 Code section 2234 on the grounds of unprofessional conduct
11 as defined in section 2234(e) of that Code in that he committed
12 acts involving dishonesty or corruption which are substantially
13 related to the qualifications, functions, or duties of a
14 physician and surgeon as more particularly alleged hereinafter:

15 (a) On June 3, 1985, Hearing Officer John R. Hooe, III,
16 made 31 separate Findings of Fact after a hearing held on a
17 Statement of Particulars filed against respondent by the
18 State Board of Medicine of Virginia. Those Findings of
19 Fact, adopted by the Virginia State Board of Medicine on
20 August 7, 1985, as amended, are alleged herein as follows:

21 (1) Dr. Timberlake has limited his practice of
22 medicine to the specialty of otolaryngology.

23 (Otolaryngology is the division of medical science
24 dealing with the science of the ear, nose and larynx,
25 their function and diseases. See Tabers Cyclopedic
26 Medical Dictionary (10th ed. 1965) page 0-25.)
27

1 (2) Dr. Timberlake sees approximately 100
2 patients a week.

3 (3) The complaints against Dr. Timberlake are
4 with respect to six unrelated patients.

5 (4) The six unrelated patients were all pre-
6 adolescent boys at the time of the alleged behavior of
7 Dr. Timberlake about which they complained, ages six
8 through thirteen.

9 (5) All alleged actions by Dr. Timberlake in
10 relation to the six boys occurred between the years
11 1977 and 1984.

12 (6) Patient A, presenting a history of chronic
13 sinus infections and an abscessed ear, was seen by Dr.
14 Timberlake on October 12, 17, and 20, 1983. On October
15 12, 1983, in the presence of patient's mother, Dr.
16 Timberlake examined the patient's ear, nose, and
17 throat. On the same date Dr. Timberlake examined
18 Patient A in the operating room with no person present
19 other than Dr. Timberlake and the patient.

20 (7) During the October 12, 1983, examination in
21 the operating room, Dr. Timberlake used the palm of his
22 hand to rub or brush over the testicles and penis of
23 Patient A.

24 (8) On October 20, 1983, Dr. Timberlake examined
25 Patient A in the operating room with no person present
26 other than Dr. Timberlake and the patient.
27

/

1 (9) During the October 20, 1983, examination in
2 the operating room, Dr. Timberlake used the palm of his
3 hand to rub or brush over the testicles and penis of
4 Patient A several times.

5 (10) Dr. Timberlake stated that his reason for
6 examining an adolescent male's chest or genital area in
7 a room separate from the patient's mother and the
8 doctor's office staff was that he felt that the male
9 adolescent patient would feel awkward and embarrassed.

10 (11) Although Dr. Timberlake testified that when
11 he rechecked patient A's groin area on the third visit,
12 he was 'checking for adnopathy', Dr. Timberlake never
13 advised the patient or the patient's mother that he
14 suspected the patient might have mononucleosis, nor did
15 he obtain any laboratory tests to verify his suspicion.

16 (12) Dr. Timberlake's examination of Patient A's
17 genitals were not customary nor reasonable for an
18 otolaryngologist.

19 (13) There is no medical reason to examine the
20 chest of an adolescent or pre-adolescent male outside
21 the presece of the patient's mother.

22 (14) On July 14, 1983, Dr. Timberlake examined
23 Patient B in an examining room in the presence of
24 patient's mother. Dr. Timberlake then stated that he
25 wanted to examine the patient's heart and lungs, took
26 the patient to the operating room where only Dr.
27 Timberlake and the patient were present. During the

1 examination in the operating room, Dr. Timberlake
2 touched the patient's penis with the heel of his hand.

3 (15) On August 8, 1983, patient B returned to
4 Dr. Timberlake's office for a scheduled pre-operative
5 examination. Dr. Timberlake examined the patient's
6 ears, nose and throat in the presence of the patient's
7 mother and then took the patient to the operating room
8 for the expressed purpose of examining the patient's
9 heart and lungs. During the examination in the
10 operating room, with only Dr. Timberlake and the
11 patient present, Dr. Timberlake placed his hand on the
12 patient's lower abdomen, touching the top of the
13 patient's penis with the heel of his hand.

14 (16) On September 20, 1983, Dr. Timberlake
15 operated on patient B. Postoperatively, Dr. Timberlake
16 came to Patient B's hospital room and checked the packs
17 in the patient's nose. Dr. Timberlake also pulled the
18 curtains around the patient's bed, told the patient to
19 lower his pajama bottom and then placed his hand on the
20 patient's lower abdomen, touching the top of the
21 patient's penis with the heel of his hand.

22 (17) It was not within the scope of an
23 appropriate otolaryngology examination to palpate the
24 abdomen of Patient B following a septoplasty since
25 there were no complaints by Patient B of abdominal
26 pain. The postoperative examination conducted by Dr.

27 /

1 Timberlake in the hospital room was not within the
2 scope of an appropriate otolaryngology examination.

3 (18) On October 27, 1982, Patient C was examined
4 by Dr. Timberlake in an examining room in the presence
5 of the patient's mother. Dr. Timberlake then stated
6 that he was going to take Patient C to another room to
7 check his lungs. Dr. Timberlake then took Patient C to
8 the operating room and in the presence of only the
9 patient placed his hand on the patient's penis and then
10 his ear on the patient's lower abdomen.

11 (19) Dr. Timberlake examined Patient C seven
12 other times and on each occasion took the patient to
13 the operating room, where only the doctor and the
14 patient were present, and placed his hand on the
15 patient's penis and then placed his ear upon the
16 patient's lower abdomen.

17 (20) It is not with[in] the scope of an
18 appropriate otolaryngology examination for a doctor to
19 place his ear on the patient's lower abdomen. It was
20 not within the scope of an appropriate otolaryngology
21 examination for Dr. Timberlake to examine Patient C's
22 genitalia.

23 (21) On April 21, 1977, Dr. Timberlake performed
24 a pre-operative physical examination on Patient D,
25 including a hernia check, for surgery scheduled for
26 April 28, 1977. Dr. Timberlake testified that he
27

/

generally performs pre-operative physical examinations two days prior to scheduled surgery.

(22) Dr. Timberlake on five occasions squeezed the penis of Patient D during the pre-operative examinations. Dr. Timberlake's squeezing of Patient D's penis was not within the scope of an appropriate otolaryngology examination.

(23) Postoperatively, Dr. Timberlake [sic] squeezed Patient D's penis during examinations. There was no medical reason to perform a postoperative examination of Patient D's genital area or to squeeze his penis.

(24) On October 17, 1983, Dr. Timberlake examined the ears, nose, throat and chest of Patient E in the presence of the patient's mother. Dr. Timberlake and a nurse took the patient to the operating room for the purpose of removing wax from the patient's ears. In the presence of only the patient, Dr. Timberlake, touched the patient's testicles and penis while conducting what Dr. Timberlake described as a check for a hernia.

(25) Patient E was examined on two other occasions in the operating room when Dr. Timberlake, only in the presence of the patient, touched with his hand the testicles and penis of the patient.

/

/

1 (26) The examination of Patient E's genital area
2 was not with[in] the scope of an appropriate
3 otolaryngology examiantion.

4 (27) Dr. Timberlake treated Patient F during the
5 period of February 25, 1975, through October 26, 1977,
6 including twenty-two office visits.

7 (28) During most of the office visits,
8 Dr. Timberlake took the patient to the operating room
9 and, in the presence of only the patient, on repeated
10 occassions [sic] held or cupped the patient's
11 testicles, on some occasions squeezed the patient's
12 penis with his fingers and on one occasion placed his
13 ear on the patient's abdomen below his navel.

14 (29) Dr. Timberlake's repeated examinations of
15 [Patient] F's genital area were medically unnecessary
16 and not within the scope of an appropriate
17 otolaryngology examination.

18 (30) Dr. Timberlake performs all aspects of his
19 physical examinations in the examining room for all
20 patients other than pre-adolescent or adolescent
21 males.

22 (31) Dr. Timberlake's practice routinely included
23 the examination of the chest or groin of an adolescent
24 or pre-adolescent male in private while Dr.
25 Timberlake's nurse or staff waited in the hallway while
26 Dr. Timberlake performed the examination behind a
27 closed door.

1 (b) On June 3, 1985, Hearing Officer Hooe proposed two
2 Conclusions of Law to the Virginia State Board of Medicine which
3 were amended and adopted by said Board on August 7, 1985, and
4 which are alleged herein as follows:

5 (1) Dr. Timberlake is guilty of fraud or deceit in the
6 practice of otolaryngology in violation of a § 54-316(3) as
7 more fully defined in § 54-317(14) based on the above-stated
8 Findings of Fact.

9 (2) Dr. Timberlake is guilty of unprofessional conduct
10 in violation of § 54-316(3) as more fully defined in §
11 54-317 of the Code of Virginia. Particularly, Dr.
12 Timberlake's inappropriate examinations as described in the
13 Findings of Fact are contrary to the standards of ethics of
14 his branch of the healing arts and were conducted in such a
15 manner as to make his practice a danger to the health and
16 welfare of his patients. § 54-317(11).

17 (3) In addition, the Board made the following
18 additional Conclusion of Law: The above stated Findings of
19 Fact and Conclusions of Law constitute violations of §
20 54-316(3) as more fully defined in § 54-317(16). (Attached
21 hereto as Exhibit A and incorporated by reference as if
22 fully set forth are copies of each of the Code of Virginia
23 sections mentioned above.)

24 (c) On August 7, 1985, the Virginia State Board of
25 Medicine ordered that respondent's license to practice medicine
26 in the State of Viriginia be revoked, stayed said revocation and
27 placed respondent's medical license on probation for an

1 indefinite period of time upon certain terms and conditions.

2 Thereafter, on January 1, 1986, the Virginia State Board of
3 Medicine reaffirmed said order and imposed the following terms
4 and conditions of probation:

5 (1) That all examinations of patients under the age of
6 eighteen by Dr. Timberlake shall be in the presence of an
7 appropriate chaperone, preferably a parent;

8 (2) That Dr. Timberlake enter into treatment by a
9 psychiatrist or clinical psychologist selected from a list
10 of three names provided by the Psychiatric Advisory Board;

11 (3) That Dr. Timberlake authorize any treating
12 psychiatrist or clinical psychologist to freely communicate
13 with the Psychiatric Advisory Board and the Board of
14 Medicine;

15 (4) That Dr. Timberlake be seen by the Psychiatric
16 Advisory Board prior to the November 1986 Board meeting;

17 (5) That Dr. Timberlake be seen by the Board of
18 Medicine at its November 1986 meeting;

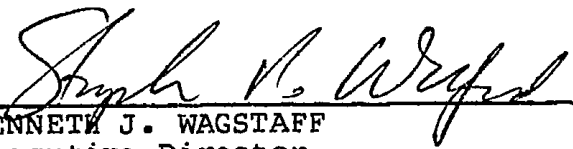
19 (6) Violation of any of the above terms and conditions
20 shall result in the immediate rescission of the stay of
21 revocation.

22 8. Respondent has subjected his license to disciplinary
23 action under California Business and Professions Code section
24 2234 on the grounds of unprofessional conduct as defined in
25 section 2305 of that Code in that the revocation, suspension, or
26 other discipline by another state of a license or certificate to
27 practice medicine issued by the state to a licensee under

1 Chapter 5 of Division 1 of that Code constitutes grounds for
2 disciplinary action for unprofessional conduct against such
3 licensee in this state. The allegations contained in paragraph
4 7, above, are incorporated by reference herein as if fully set
5 forth hereat.

6 WHEREFORE, Complainant prays that the Division of
7 Medical Quality hold a hearing on the allegations contained
8 herein, and following said hearing, take such action as provided
9 by sections 2234 and 2227 of the Business and Professions Code,
10 taking such other and further action as may also be proper.

11 DATED: July 31, 1986

12
13 
14 KENNETH J. WAGSTAFF
15 Executive Director
16 Board of Medical Quality Assurance
17 Complainant
18
19
20
21
22
23
24
25
26

27 TSL:ac:gm
7/1/86

EXHIBIT A

161; 1962, c. 128; 1966, c. 657; 1968, c. 674; 1970, c. 69; 1975, c. 508; 1980, c. 157; 1982, c. 606.)

The 1982 amendment rewrote this section.

§ 54-315.2. Annual list of certificate holders. — On or before September first of each year the Board shall prepare annually a list of the names and addresses of all persons to whom certificates of renewal have been issued, classifying such names alphabetically under appropriate designations indicating the school of practice of each certificate holder. In the discretion of the Board such list, or a supplemental list, may be arranged according to the counties and cities of the State. The Board shall provide for the publication and distribution of the lists or any part or parts thereof in such manner as it may deem best. (1948, p. 982; Michie Suppl. 1948, § 1618a; 1975, c. 508.)

§ 54-315.3. Disposition of fees for renewals. — All fees for renewal of certificates collected by the Board under the provisions of this article shall be paid into the state treasury, and all funds so deposited are hereby appropriated to the State Board of Medicine, for the administration and enforcement of the provisions of this article. (1948, p. 982; Michie Suppl. 1948, § 1618a; 1975, c. 508.)

§ 54-315.4. Penalty for violation. — Any person who shall violate any of the provisions of this article shall be punished by a fine of not less than twenty-five nor more than fifty dollars for each offense. (1948, p. 982; Michie Suppl. 1948, § 1618a.)

ARTICLE 5.

Refusal of Examination; Refusal, Revocation or Suspension of Certificate or License, Censure, Reprimand or Probation.

§ 54-316. Grounds for refusal of examination or certificate and for suspension or revocation of certificate or license, censure, reprimand or probation. — The Board may refuse to admit a candidate to any examination, and may refuse to issue a certificate to any applicant who applies for the same through reciprocity or otherwise, and may suspend for a stated period of time or indefinitely, or revoke any certificate or license held by any person or censure or reprimand such person or place him on probation for such time as it may designate and direct that during such period he furnish the secretary of the Board at such intervals as it may direct, evidence that he is not practicing his profession, in violation of the provisions of this chapter, if it finds that such candidate, applicant or licensee:

(1) Has made false statements or representations or has been guilty of fraud or deceit in obtaining admission to the practice, or has been guilty of fraud or deceit in the practice, of any branch of the healing arts;

(2) Uses intoxicating liquors, narcotics, or other drugs to the extent that he is unfit for the performance of his professional obligations and duties;

(3) Is guilty of immoral conduct, or of unprofessional conduct as defined in § 54-317;

(4) Is grossly ignorant or careless in his practice, or is guilty of gross malpractice;

(5) Is mentally or physically incompetent to practice his profession with safety to his patients and the public;

(6) Has a license or otherwise in the States possessing such license. (Suppl. 1946, § c. 727.)

Applied in Virginia State 267 (E.D. Va. 1948)

§ 54-317. of medicine, psychology or unprofessional

(1) Undertake to procure or perform abortion; or

(2) Engage in name, or impersonate

(3) Prescribe edge that it therapeutic use or disposal

(4) [Repeat]

(5) Causes timent or ailments or cine, or in which be permanent

(6) Advertise treat human which he has

(7) Violate healing arts

(8) Being a therapy, including of medicine, undertakes or under his

(9) Knows of this State such laws as

(10) Aids a person known

(11) Conduct his branch in danger to the practice of medicine, illness, drug type of malpractice this subject investigation to compel a physicians ination where

(6) Has a license to practice a branch of the healing arts revoked, suspended or otherwise restricted in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction. (1944, p. 278; Michie Suppl. 1946, § 1619; 1954, c. 627; 1958, c. 461; 1966, c. 166; 1978, c. 622; 1979, c. 727.)

Applied in *Health Systems Agency v. Virginia State Bd. of Medicine*, 424 F. Supp. 267 (E.D. Va. 1976).

§ 54-317. What constitutes unprofessional conduct. — Any practitioner of medicine, osteopathy, chiropractic, podiatry, physical therapy or clinical psychology or any physical therapy assistant shall be considered guilty of unprofessional conduct if he:

(1) Undertakes or engages in any manner or by any means whatsoever to procure or perform or to aid or abet in procuring or performing a criminal abortion; or

(2) Engages in the practice of any of the healing arts under a false or assumed name, or impersonates another practitioner of a like, similar or different name; or

(3) Prescribes or dispenses any controlled substance with intent or knowledge that it shall or will be used otherwise than medicinally, or for accepted therapeutic purposes, or with intent to evade any law with respect to the sale, use or disposition of such drug; or

(4) [Repealed.]

(5) Causes the publication or circulation or broadcasting of any advertisement or statement in which he claims that he can cure or treat diseases, ailments or infirmities by any secret method, procedure, treatment or medicine, or in which he claims that a manifestly incurable disease or infirmity can be permanently cured; or

(6) Advertises or professes or holds himself out as being able and willing to treat human ailments under a system or school of practice other than that for which he holds a certificate or license granted by the Board; or

(7) Violates any of the provisions of § 54-278 or practices any branch of the healing arts in violation of the provisions of this chapter; or

(8) Being a practitioner of physical therapy, undertakes to practice physical therapy, independently of the referral and direction of a duly licensed doctor of medicine, or osteopathy; or being a licensed physical therapy assistant, undertakes to practice independently without direction of a physical therapist or under his supervision or control; or

(9) Knowingly and willfully commits any act which is a felony under the laws of this State or of the United States, or any act which is a misdemeanor under such laws and involves moral turpitude; or

(10) Aids or abets, has professional connection with, or lends his name to any person known to him to be practicing illegally any of the healing arts; or

(11) Conducts his practice in a manner contrary to the standards of ethics of his branch of the healing arts or in such a manner as to make his practice a danger to the health and welfare of his patient or to the public; or is unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this subsection, the Board shall upon probable cause, and upon preliminary investigation by informal conference as provided in § 54-318.1, have authority to compel a practitioner to submit to a mental or physical examination by physicians designated by it. Failure of a practitioner to submit to such examination when directed shall constitute an admission of the allegations against

him, unless the failure was due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician affected under this subsection shall, at reasonable intervals, be afforded an opportunity to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients; or

(12) Being a practitioner of the healing arts who may lawfully dispense, administer, or prescribe, medicines or drugs, and not being the holder of a certificate of registration to practice pharmacy, engages in selling medicine, drugs, eyeglasses, or medical appliances or devices to persons who are not his own patients, or sells such articles to his own patients either for his own convenience, or for the purpose of supplementing his income; provided, however, that the dispensing of contact lenses by a practitioner to his patients shall not be deemed to be for the practitioner's own convenience or for the purpose of supplementing his income; or

(13) Publishes or causes to be published in any manner an advertisement relating to his professional practice which (i) is false, deceptive or misleading, (ii) contains a claim of superiority, or (iii) violates such regulations as may be promulgated by the Board governing advertising; or

(14) Performs any dishonorable, unethical, unprofessional or unconscionable conduct likely to deceive, defraud or harm the public; or

(15) Violates any provision of law or regulation, State or federal relating to the manufacture, distribution, dispensing or administration of drugs; or

(16) Violates or cooperates with others in violating any of the provisions of this chapter or regulations of the Board. (1944, p. 278; Michie Suppl. 1946, § 1619; 1954, c. 627; 1958, c. 161; 1966, cc. 166, 657; 1968, c. 582; 1970, c. 69; 1973, c. 529; 1975, c. 508; 1978, c. 622; 1979, c. 727; 1980, c. 157.)

Law Review. — For a survey of developments in Virginia constitutional law for the year 1973-1974, see 60 Va. L. Rev. 1490 (1974).

Former provision prohibiting advertising held unconstitutional. — Since subdivision (13) of this section as it stood before the 1978 amendment did not prevent physicians from giving prospective patients the same information the subdivision proscribed in advertisements, the section could not be sustained on the basis that it was designed to prevent deceptive advertising. The protection of the public from fraud and deception must rest on other provisions in the statute. Therefore, the State's interest in prohibiting false and

deceptive advertising by physicians did not justify the broad restrictions that former subdivision (13) imposed. *Health Systems Agency v. Virginia State Bd. of Medicine*, 424 F. Supp. 267 (E.D. Va. 1976).

Subdivision (13) of this section as it stood before the 1978 amendment abridged the plaintiffs' First Amendment rights to gather, publish and receive information about physicians' services in the manner proposed by the plaintiff agency through the publication of its directory. *Health Systems Agency v. Virginia State Bd. of Medicine*, 424 F. Supp. 267 (E.D. Va. 1976).

Applied in *Simopoulos v. Virginia State Bd. of Medicine*, 644 F.2d 321 (4th Cir. 1981).

§ 54-317.1. Additional grounds for refusal of examination or certificate; mandatory suspension or revocation of certificate or license. — The Board may refuse to admit a candidate to any examination, may refuse to issue a license, and may refuse to issue a certificate to any applicant who applies for the same through reciprocity or otherwise, and shall suspend or revoke, in the manner provided in § 54-321.2, any certificate or license held by any person if it finds that such candidate, applicant or licensee:

(1) Has been convicted in the courts of this or any other state, territory or country of a felony or of a crime involving moral turpitude. The conviction of any offense in another state, territory or country, which if committed in this State would be deemed a felony, shall be held to be a felony under this section without regard to its designation in such other state, territory or country;

(2) Had
tion, either
such pers
c. 657; 197

§ 54-312

Cross re
the subject
§ 54-317.3.

§ 54-3-
disorder
ner of the
person li
(§ 54-14C
title sha
board wh

1. Tre
attending
that the
constitut
the pub'

2. Tre...
Any re...
tary of t...
who is t...
surround...

B. Any
judicial
from an
faith or

C. M.
an alcohol
directly
shall be
that suc-
or regul
1973, c.

Cross:
physician
while m
§ 8.01-58

§ 54-
sionals
of Virgi
ary act
under t
professi
or alcol
B. T
Virgini
action
under t